

the two amendments does cover the ground on all of this. I point out that Senator BINGAMAN's part of this amendment, this new section 107, is not necessary either.

U.S. obligations under the Nuclear Non-Proliferation Treaty already compel the United States to assure that its nuclear exports do not help nonnuclear weapons states to produce weapons. That obligation bars helping not only India but any nonnuclear weapons state. The Atomic Energy Act and the Hyde Act already provide tools to address the concern Senator BINGAMAN has raised.

Let's look at the specific provision, if you will, under the proposed section 107. It would require a certification in the event of a nuclear detonation by India that no United States material, equipment, or technology contributed to the detonation.

And what happens if the President makes that certification? The amendment does not say what happens. What happens if the President does not make the certification, or says it does not know whether any U.S. material, equipment, or technology was involved? This is a certification that may well be impossible to make under the law as drafted in this amendment.

So even with the intent to do something about it, how can you make it? How are you going to determine whether, in fact, materials have been used, or is it just the assumption that if one occurred, it would be, which may be an entirely false assumption when it comes to that country? How will we ever know for sure that no U.S. technology was diverted?

In any case, it is the certification that carries no consequences. The certification is not needed. Again section 104 of the Hyde act already requires the President to keep Congress fully and currently informed of any violation by India of its nonproliferation commitments and of this agreement.

Any contributions by U.S. exports to an India weapons program under the United States-India agreement would certainly be a violation of India's commitments and of the agreement, and so would need to be reported to us, and would very likely be reported to us long before any detonation, I might add.

Section 2 of the proposed act requires a report from the President after an Indian test describing those United States export controls that could be used to minimize any potential contribution that United States nuclear exports to third countries might make to an Indian nuclear weapons program.

The Hyde act and the Atomic Energy Act already address this issue. And let me quote to my colleagues again. I apologize for citing in detail these things, but you need to know this, because statements being made here on the floor about this, I say respectfully, are not accurate, about what existing laws require and mandate and demand in these areas.

Section 104(d)(5) of the Hyde act requires the President of the United States:

shall ensure that all appropriate measures are taken to maintain accountability with respect to nuclear materials, equipment and technology . . . reexported to India so as to ensure . . . United States' compliance with [obligations under] article I of the Nuclear Non-Proliferation Treaty.

Section 104(g)(2) of the Hyde Act explicitly requires detailed reporting on any United States authorizations for the reexport to India of nuclear materials and equipment.

The Atomic Energy Act further requires that the United States not engage in civil nuclear cooperation with any country without an agreement for nuclear cooperation and that every such agreement must contain a guarantee by the other country that it will not transfer any nuclear material or facility to a third country without the prior approval of the United States.

Section 127 of that act makes it explicit that for any U.S. export of source or special nuclear material, nuclear facilities, or sensitive nuclear technology, that material, facility, or technology may not be retransferred to a third party without the United States's prior consent. The transfer cannot go forward unless the third party agrees to abide by all of the agreements of section 127.

That section also requires that the source and special nuclear material, nuclear facilities, and sensitive nuclear technology being exported must be under IAEA safeguards, and may not be used in or for research and development on a nuclear explosive device.

This assures us that any such report does not contribute to India's weapons program. The truth is that if India were to conduct another nuclear test or reexport by third countries, United States-origin nuclear material, equipment, or technology would be the least likely way for India to evade a cut-off of cooperation.

If any third country were to provide United States-origin nuclear material, or equipment, or material device from the United States-origin material or equipment for India without the United States's consent, the United States would have the right to cease nuclear cooperation with that country and to demand the return of material and/or equipment that has been provided under that country's nuclear cooperation agreement with the United States.

So third countries are highly unlikely, given the implications under the existing law, to reexport without our permission, or run the risk, obviously, of facing all of the admonitions that the previously existing law requires. A much more serious concern would be the risk that other countries would export their own nuclear material or equipment, not our material but their own nuclear equipment and material technology, to India after we had cut off exports. That concern is not addressed at all by the Dorgan and Binga-

man amendment. But the bill before us does address that concern. Their amendment leaves that out entirely, which is actually a far more dangerous way that this may happen.

So under the bill before us, by reiterating a provision under the Hyde Act that if India should test again:

It is the policy of the United States to seek to prevent a transfer to India of nuclear equipment, of materials or technology from other participating governments in the Nuclear Suppliers Group or from any other source.

This bill already lays down a marker regarding the real concern if India were to test. Again, whether it is reexport or direct shipments, we are in a position, I think, to respond aggressively. I point out, you defeat this bill, we are back to the agreement and a lot of this, other than what I have mentioned in existing law, does not apply.

So, again, I say to my friends and colleagues who offered the amendment, this is not a debate about whether some people care about nuclear weapons and others do not. The question is, are we being smart and intelligent about moving a major democracy that lives in a dangerous part of the world into a direction that will make it far more cooperative with us in doing exactly what the underlying amendment seeks to do, that is, to move away from weapons to commercial use, to dealing with the carbon emissions that are occurring here, to provide that kind of new relationship with India that I think is absolutely critical for our safety and security in the 21st century.

Walk away from this, drive a wedge between India and the United States in that part of the world, then I think you are going to have exactly the kind of problem our two colleagues have suggested. It gets closer to what they fear most. I believe what we have offered our colleagues today drives us further away from that outcome, which is what all of us ought to be trying to achieve. That is the reason I reject these amendments, and urge my colleagues to do so when they occur on a vote later today. I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I join my distinguished colleague Senator DODD in rising in opposition to the amendment offered by the Senators from North Dakota and New Mexico.

I believe the bill before us today and the Hyde act passed by Congress in 2006 addressed the possibility of a future Indian nuclear test in a very clear and definitive way. I am confident the Congress has provided the necessary assurances and authorities to protect United States interests and promote strong nonproliferation policies in the event of an Indian nuclear detonation.

The amendment seeks to address a concern that the Foreign Relations Committee addressed in 2006, and last month when we voted 19 to 2 to report the legislation pending before the Senate. Both bills ensure that there is no